

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

TIMOTHY WAYNE WILLIAMS,

Plaintiff,

v.

**CIVIL ACTION NO. 1:22CV4
(Chief Judge Kleeh)**

**COMMISSIONER OF SOCIAL
SECURITY ADMINISTRATION**

Defendant.

**ORDER ADOPTING REPORT AND RECOMMENDATION [ECF NO. 17],
GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT [ECF NO. 12],
DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT [ECF NO. 13],
AND REMANDING CIVIL ACTION TO COMMISSIONER**

On January 1, 2022, the plaintiff, Timothy Williams ("Williams"), filed a complaint against the Commissioner of the Social Security Administration ("Commissioner") [ECF No. 1]. Williams sought review of the Commissioner's final decision denying his application for Social Security Disability Benefits and Supplemental Security Income. In accord with 28 U.S.C. § 636 (b) and L.R. Civ. P. 9.02, this action was referred to United States Magistrate Judge James P. Mazzone for initial review.

In a Report and Recommendation ("R&R") entered on December 15, 2022, Magistrate Judge Mazzone recommended that the Court grant Williams's motion for summary judgment and deny the Commissioner's motion for summary judgment [ECF No. 17]. Following a careful review of the record, he concluded that the Administrative Law

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Judge formulation of Williams's residual functional capacity contained legal error and/or was not supported by substantial evidence because it contained errors and omissions which precluded meaningful review. *Id.* at 7-10.

The R&R informed the parties of their right to file "written objections identifying the portions of the Report and Recommendations to which objection is made, and the basis for such objection." *Id.* at 11. It further warned that failure to do so would result in waiver of the right to appeal. *Id.* Despite receipt of the R&R, neither party filed objections to the recommendation.

"The Court will review de novo any portions of the magistrate judge's Report and Recommendation to which a specific objection is made...." *Dellacirprete v. Gutierrez*, 479 F. Supp. 2d 600, 603-04 (N.D.W. Va. 2007) (citing *Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983)). The Court will uphold those portions of a recommendation to which no objection has been made unless they are "clearly erroneous." See *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005). Failure to file specific objections waives appellate review of both factual and legal questions. See *United States v. Schronce*, 727 F.2d 91, 94 & n.4 (4th Cir. 1984); see also *Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991).

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Having received no objections to the R&R, the Court has no duty to conduct a de novo review of Magistrate Judge Mazzone's findings. Following its review of the R&R and the record for clear error, the Court:

1. **ADOPTS** the R&R [ECF No. 17];
2. **GRANTS** Williams's Motion for Summary Judgment [ECF No. 12];
3. **DENIES** the Commissioner's Motion for Summary Judgment [ECF No. 13]; and
4. **REMANDS** this civil action to the Commissioner for further action in accordance with this Order and Magistrate Judge Mazzone's R&R.

It is so **ORDERED**.

Pursuant to Fed. R. Civ. P. 58, the Court **DIRECTS** the Clerk of Court to enter a separate judgment order and to transmit copies of both Orders to counsel of record.

DATED: January 3, 2023

Tom S. Kline

THOMAS S. KLEEH, CHIEF JUDGE
NORTHERN DISTRICT OF WEST VIRGINIA